

### REMARKS

This Amendment & Response amends claims 26 and 27, cancels claims 1- 13, 22 and 24, and adds no new claims. Claims 25-27 remain pending in the application.

#### *Objections to the Specification*

1.0 *The Examiner has objected to the specification for failure to provided proper antecedent basis for the terms "pivoting", "pivot axis", "right half" and "left half".*

Applicant has amended paragraph [0069] to expressly recite the terms "pivoting", "pivot axis", "right half" and "left half" appearing in claims 25 and 26. Withdrawal of this rejection is respectfully requested.

#### *Objections/Rejections Under 35 U.S.C. §112*

2.0 *The Examiner has rejected claims 23-27 as unsupported by the original specification.*

The Examiner contends that the terms "pivoting", "pivot axis", "right half" and "left half" added to claim 23 in the last Amendment and Response were not described in the specification as originally filed. Applicant respectfully disagrees.

Figures 7 and 8 and paragraphs [0069] and [0070] clearly depict a protective headguard having (i) right and left halves, and (ii) inner and outer layers pivotable relative to one another about a pivot axis extending laterally through both the right half and left half of the headguard. Depiction of a claimed feature, property, function or characteristic only in a drawing is sufficient to establish compliance with the written description requirement of 35 U.S.C. §112. *See*, M.P.E.P. §2163.(II)(A)(3)(a) [GUIDELINES FOR THE EXAMINATION OF PATENT APPLICATIONS UNDER THE 35 USC 112 PARAGRAPH 1 WRITTEN DESCRIPTION REQUIREMENT].

The Examiner appears to be requiring an *in haec verba* correspondence of the terminology used in the claims and the terminology used in the specification. No such requirement exists. *See*, M.P.E.P. §2163.02 [STANDARD FOR DETERMINING COMPLIANCE WITH

THE WRITTEN DESCRIPTION REQUIREMENT]. Withdrawal of this rejection is respectfully requested.

***Objections/Rejections***  
***Under 35 U.S.C. §102 and §103***

**3.0** *The Examiner has rejected claims 1-4, 6, 8-10, 22-24, 26 and 27 as anticipated by Nomiya.*

Applicant has cancelled claims 1-24 and amended claims 26 and 27 to depend from claim 25. Since claim 25 is not subject to this rejection, this rejection has been rendered moot and should be withdrawn.

**4.0** *The Examiner has rejected claim 25 as anticipated by Lovell.*

**SUMMARY OF CITED REFERENCE**

**Lovell** (United States Patent No. 4,307,471) discloses a protective helmet comprising overlapped inner and outer layers attached at multiple points so as to permit the inner and outer layers to move towards and away from one another.

**SUMMARY OF CLAIMED INVENTION**

The Present Claimed Invention is a protective headguard with overlapped inner and outer layers attached at a pair of diametrically opposed points of attachment so as to permit pivoting of the outer layer relative to the inner layer about a pivot axis extending through these points of attachment.

**LEGAL BASIS**

An anticipation rejection under 35 U.S.C. § 102 requires that the cited reference(s) disclose each and every element of the claimed invention. *See, Hybritech Inc. v. Monoclonal*

Antibodies, Inc., 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); Kloster Speedsteel AB et al. v. Crucible Inc. et al., 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986). A reference anticipates a claim only when the reference discloses each and every element recited in the claim. See, Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987) and M.P.E.P. §2131. Accordingly, the "exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference." Atlas Powder Co. v. E.I. duPont De Nemours & Co., 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984).

*LOVELL DOES NOT DISCLOSE EACH AND  
EVERY ELEMENT OF THE CLAIMED INVENTION.*

The Present Claimed Invention attaches the inner and outer layers at a pair of diametrically opposed points of attachment so as to permit *pivoting* of the outer layer relative to the inner layer about a pivot axis extending through the points of attachment. The inner and outer layers on the helmet disclosed by Lovell are attached at multiple points along each side of the helmet, thereby preventing the inner and outer layers from pivoting. The helmet disclosed by Lovell achieves movement of the outer layer relative to the inner layer by employing longitudinally elongated slots in the outer layer at the points of attachment, thereby permitting the outer layer to *lift* away from the inner layer.

**5.0** *The Examiner has rejected claim 5 and 11-13 as obvious over Nomiyama in view of Nakayama*

Applicant has cancelled claims 5 and 11-13, rendering this rejection moot.

**6.0** *The Examiner has rejected claim 7 and 11-13 as obvious over Nomiyama in view of World Patent to Von Holst et al.*

Applicant has cancelled claims 7 and 11-13, rendering this rejection moot.

**CONCLUSION**

Applicant respectfully submits that all pending claims (claims 25-27) are in condition for allowance.

Respectfully submitted,

Date

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By

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